(2)

No. 83-2110

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

CLARKSDALE BAPTIST CHURCH,
Petitioner,

v.

WILLIAM H. GREEN, *et al.*, and
DONALD T. REGAN, Secretary of the Treasury
of the United States, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS WILLIAM H. GREEN, *et al.* IN OPPOSITION TO CERTIORARI

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QUESTIONS PRESENTED

A 1980 decree in this case requires the Internal Revenue Service (IRS) to apply specified evidentiary standards, derived from federal court rulings in analogous suits, in determining whether or not Mississippi private schools (including those operated by churches) follow a racially discriminatory policy which makes them ineligible for federal tax exemption (and consequent tax deductibility of contributions to them). Petitioner operates a private school in Mississippi and seeks to maintain its federal tax-exempt status without being required to demonstrate that it is nondiscriminatory, in accordance with those standards. The questions presented are:

1. Does a requirement that the IRS collect and consider information regarding the establishment, history, student enrollment (by race) and staff employment (by race) of Mississippi non-public schools which are affiliated with churches, when IRS determines whether those schools are eligible for federal tax exemption, violate the Establishment Clause of the First Amendment because it creates "excessive entanglement" between the federal government and the churches?

2. Is it irrational, arbitrary, and violative of the First Amendment to infer that a Mississippi church-operated non-public school—which (a) opened its doors the very day when local public school desegregation began, (b) tripled its white student enrollment five years later when public school integration accelerated, and (c) has never enrolled a black student nor employed a black teacher—follows a racially discriminatory policy and is ineligible for federal tax exemption unless the school can demonstrate by clear and convincing evidence that it is nondiscriminatory?

3. Does the district court's order require petitioner, or any other Mississippi church school, as a condition of

eligibility for federal tax exemption, to take any specific action contrary to its religious beliefs, thus violating any rights under the Free Exercise Clause of the First Amendment?

4. Did the plaintiffs, parents of black public school-children, have standing to bring this case and seek effective relief, in light of the findings that federal tax exemptions were critically important to the continued operation of racially discriminatory Mississippi private schools, and that such institutions materially impeded public school desegregaton throughout the state (including the minor plaintiffs' school districts)?

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STATEMENT

This case involves the entitlement to federal tax exemption of "large numbers of segregated private schools . . . established in the State [of Mississippi] for the purpose of avoiding a unitary public school system," where "tax exemptions were critically important to the ability of such schools to succeed" and "the connection between the grant of tax exemptions to discriminatory schools and

desegregation of the public schools . . . was close enough to warrant the conclusion that irreparable injury to the interest in desegregated education was threatened if the tax exemptions continued." *Allen v. Wright*, 52 U.S.L.W. 5110, 5118 (U.S. July 3, 1984).

Proceedings Below

In 1971 the district court directed the Internal Revenue Service to follow certain specified procedures in determining whether Mississippi private schools, including those operated by churches,[1] were eligible for tax-exempt status. *Green v. Connally*, 330 F. Supp. 1150 (D.D.C.), *aff'd mem. sub nom. Coit v. Green*, 404 U.S. 997 (1971). In 1976 the plaintiffs sought further relief, alleging that the 1971 decree had proved ineffective—as demonstrated by the continued federal tax exemption of Mississippi private schools determined to be racially discriminatory in contested federal court proceedings.

Plaintiffs' motion[2] asserted that while the three-judge court had, in 1971, declined to impose more specific injunctive relief because IRS Commissioner Thrower had promised to review the tax-exempt status of nine named Mississippi private schools in accordance with proper legal standards,[3] six of these schools were still tax-exempt in 1976. More significant, these six private schools also had been unable to meet the criteria established by the United States District Court in Mississippi for demonstrating that they were not racially discriminatory—a

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[1] *See* Plaintiffs' Opposition to Application of Clarksdale Baptist Church for Stay Pending Appeal, *Clarksdale Baptist Church v. Green*, No. A-162 (U.S. Oct. 3, 1983) [hereinafter cited as "Stay Opposition"] 7-8 n.9.

[2] Plaintiffs' 1976 Motion for an Order Substituting Parties Defendant, to Enforce Decree and for Further Relief was reproduced as Appendix "A" to their Stay Opposition herein.

[3] *See Green v. Connally*, 330 F. Supp. at 1176 n.53 and accompanying text.

necessary precondition to obtaining free textbooks for their students. *See Norwood v. Harrison*, 413 U.S. 455 (1973),[4] *on remand*, 382 F. Supp. 921 (N.D. Miss. 1974).[5] Indeed, in passing upon disputed private school

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[4] *Norwood* was a suit challenging the constitutionality of a program under which the State of Mississippi was providing free textbooks for use by white pupils enrolled in private segregation academies established to avoid public school desegregation. This Court reversed the dismissal of the case because

> . . . the Mississippi textbook program . . . significantly aids the organization and continuation of a separate system of private schools which, under the District Court holding, may discriminate if they so desire. A State's constitutional obligation requires it to steer clear, not only of operating the old dual system of racially segregated schools, but also of giving significant aid to institutions that practice racial or other invidious discrimination.

413 U.S. at 467. On remand, this Court suggested,

> The District Court can appropriately direct the appellee [Textbook Board members] to submit for approval a certification procedure under which any school seeking textbooks for its pupils may apply for participation on behalf of pupils. The certification by the school to the Mississippi Textbook Purchasing Board should, among other factors, affirmatively declare its admission policies and practices, state the number of its racially and religiously identifiable minority students and such other relevant data as is consistent with this opinion. The State's certification of eligibility would, of course, be subject to judicial review.

Id. at 471.

[5] All of the schools initially participated in Mississippi's program to make available free textbooks to private school students. After this Court's ruling that pupils at racially discriminatory institutions could not be given books consistent with the Fourteenth Amendment, *see supra* note 4, the district court established a certification procedure to be administered by the state Textbook Purchasing Board and articulated standards for determining whether a private academy was being operated on a nondiscriminatory basis. Three of the six schools immediately returned the textbooks they had received and withdrew from the program. Two others were initially approved by the Board but after the *Norwood*

certifications by the Mississippi Textbook Purchasing Board, the *Norwood* trial judge pointedly noted that one school which he found to be racially discriminatory still retained its federal tax-exempt status after the 1971 ruling in this case—and the school sought to defend its entitlement to textbooks on this ground. *See* 382 F. Supp. at 929 (supposed non-discrimination policy "obviously stated perfunctorily, at isolated intervals, and only to obtain tax advantages"). Even after the *Norwood* court's ruling, however, this school continued to enjoy the benefits of federal tax exemption, as did academies which returned their books rather than attempt to meet the *Norwood* requirements for showing nondiscrimination.[6]

Plaintiffs' evidence in this case also established that the IRS had made no effort to determine whether the numerous Mississippi private schools claiming exemption by virtue of their affiliation with churches which did not have to apply formally for tax-exempt status[7] were non-

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plaintiffs filed objections in the district court, also gave back their books and left the program. The sixth school was held to be discriminatory by the district court after an evidentiary hearing and was ordered to turn in its books. *See* Stay Opposition, Exhibit "1" to Appendix "A"; 382 F. Supp. at 928-29, 935.

[6] *See* 382 F. Supp. at 935 n.19 and accompanying text; Stay Opposition, Exhibits "1," "3" to Appendix "A."

[7] *See* Stay Opposition at 4 n.5. For example, the school operated by petitioner was not included on a 1977 IRS list of tax-exempt Mississippi private educational institutions, *see* Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Summary Judgment, *Green v. Miller*, Civ. No. 1355-69 (D.D.C. January 7, 1980), Attachment "D" (filed under seal). Nor was the Presbyterian Day School, which received only conditional approval from the court in *Norwood*, *see* 382 F. Supp. at 934 ("the Presbyterian Day School, as an entity of the church, enjoys tax exempt status, and apparently has had no involvement with the orders in Green v. Connally . . .") and later withdrew from the program, *see id.*, 410 F. Supp. 133, 138 n.3 (N.D. Miss. 1976), *aff'd and remanded*, 581 F.2d 518 (5th Cir. 1976).

discriminatory.[8] In 1980, the district court concluded "that the defendants have not violated the order of June 30, 1971, but that said order requires supplementation and modification," Pet. App. A-2 - A-3, and it granted the additional relief which is now at issue.

Petitioner then intervened in the case and moved to modify the 1980 order so as to exempt all church-operated schools from its application. On July 22, 1983, following the submission of affidavits and presentation of evidence through depositions, the trial court denied the Church's motion to modify the injunction, finding "[u]pon the basis of all of the evidence" that

> intervenor [Clarksdale Baptist Church] has failed to establish that application by the Internal Revenue Service of the procedures and standards contained in the Court's injunctive decree of May 5, 1980 (as amended June 2, 1980) to the Clarksdale Baptist Church or to church-connected schools in Mississippi, generally, violates any statutory or constitutional right of the intervenor.[9]

Petitioner's appeal to the D.C. Circuit was dismissed after oral argument before a panel, which held "the First Amendment issues presented by the Intervenor to be plainly insubstantial" (Pet. App. A-1, A-15).

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[8] *See* Deposition of James L. Bloom, Attachment "D" to Plaintiffs' Submission in Response to the Court's March 9 Order, *Green v. Miller*, Civ. No. 1355-69 (D.D.C. October 12, 1979) 23 (filed under seal). IRS argued that it was required by the letter of the 1971 decree only to deny *applications* for exemption or to withdraw favorable *rulings* which had been issued upon prior applications. Memorandum of Defendants in Response to Plaintiffs' Submission on the Merits, *Green v. Miller* (November 27, 1979) 17.

[9] Accordingly, the question of whether the district court appropriately granted summary judgment against petitioner, *see* Pet. at 3 n.1, is not in the case. The district court "further, and alternatively, rule[d] directly upon intervenor's Motion to Modify Injunction, since intervenor contends that summary judgment is inappropriate." The 1983 district court order affirmed by the court below was omitted from the Petition but is reprinted *infra*, Appendix "A."

Statement of Facts

The 1980 district court decree requires the IRS to deny or to withdraw the tax-exempt status of any Mississippi private school which either

> (a) was held, in prior adversary or administrative proceedings, to be racially discriminatory, or
>
> (b) was founded or expanded at the time of public school desegregation in the area it serves and cannot demonstrate "that [it does] not racially discriminate in admissions, employment, scholarships, loan programs, athletics, and extra-curricular programs."

See Pet. App. at A-3, A-8. The decree instructs IRS that the existence of either of these conditions creates an inference of discrimination which a school seeking exemption "may overcome by [furnishing] evidence which clearly and convincingly reveals objective acts and declarations establishing that" it follows nondiscriminatory policies.[10] It further provides examples of the sort of information which might be presented to IRS by a private school to dispel the inference of discrimination,[11] while explicitly directing IRS to consider "any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment." Pet. App. at A-4. In essence, the decree requires Mississippi private schools seeking federal tax exemption to do no more than they were already required to do under *Norwood* in order to obtain free textbooks for their pupils.

Finally, the decree requires IRS to collect, from Mississippi private schools, information adequate to permit

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[10] Pet. App. at A-3. The language used in the decree was taken from the opinion of the district court in *Norwood*, 382 F. Supp. 921 (N.D. Miss. 1974).

[11] These examples were also taken from the *Norwood* opinion, *supra* note 10.

it to decide whether a school is subject to the inference of discrimination.[12]

Petitioner operates a private school which opened in the fall of 1964—immediately after the summer extraordinary session of the Mississippi Legislature which enacted unconstitutional tuition grant legislation to impede public school desegregation.[13] Integration of the Clarksdale public schools under a "freedom of choice" plan applicable to grades 1 and 2 began in 1964-65; Clarksdale Baptist School opened to serve the same grades that year. As "freedom of choice" was extended to additional grades in the public schools, so the Clarksdale Baptist School added one grade each year from 1965-66 to 1968-69. When desegregation accelerated in 1969 and 1970,[14] enrollment in the Clarksdale Baptist School substantially increased and the school added grades 7 and 8 in the middle of a school year to accommodate white students who had previously attended public schools. Clarksdale Baptist also tripled the size of its teaching staff in 1969 and 1970 by hiring a substantial number of white teachers from the public school system.[15]

The Clarksdale Baptist School participated in the Mississippi textbook program until after *Norwood v. Harrison* was filed, when it withdrew. The school has never

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[12] The decree required IRS to conduct a survey of all Mississippi private schools, including church schools, to determine which are subject to the inference of discrimination. *See* Stay Opposition at 4 n.5.

[13] *See Coffey v. State Educational Finance Commission*, 296 F. Supp. 1389, 1391 (S.D. Miss. 1969) (3-judge court).

[14] *See Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Henry v. Clarksdale Municipal Separate School District*, 433 F.2d 387 (5th Cir. 1970); *id.*, 409 F.2d 682 (5th Cir.), *cert. denied*, 396 U.S. 940 (1969).

[15] The facts summarized in this and the following paragraphs are uncontested. *See* Stay Opposition, Appendix "D."

enrolled a black student nor employed a black staff member. Accordingly, after the 1980 decree in this case was issued, IRS notified the school that it was subject to the inference of discrimination and should furnish evidence that it operated on a nondiscriminatory basis.[16] Petitioner then intervened in this case. IRS has not yet made any determination whether the school is entitled to retain its exemption.

REASONS WHY THE WRIT SHOULD BE DENIED

As the court below correctly held, petitioner presents no substantial or important First Amendment questions; rather, petitioner's arguments are based upon theories which are demonstrably incorrect according to settled law.

It is now clear that federal law—consistently with the First Amendment—denies tax-exempt status to religious private schools which practice racial discrimination. *Bob Jones University v. United States*, 461 U.S. ——, 76 L. Ed. 2d 157 (1983). It is therefore obvious that IRS must investigate the policies and practices of religious private schools to determine whether or not they are discriminatory; a religious school's simply claiming nondiscrimination is not controlling. *See Bob Jones*, 76 L. Ed. 2d at 182 (school claimed it was not discriminatory because it only prohibited interracial dating or marriage by students). Petitioner's argument that IRS may not constitutionally require church schools seeking exemption to provide information[17] about their founding and opera-

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[16] The IRS communications to petitioner's school are reproduced as Appendix "B" to the Stay Opposition.

[17] Petitioner invokes the spectre of "widespread surveillance of religious institutions" based upon the district court's decree, which it says "create[s] excessive entanglement between government and a church in violation of the Establishment Clause," Pet. at 8, 12. But, as this Court recognized in *Walz v. Tax Commission*, 397 U.S. 664, 674 (1970), "[e]ither course, taxation of churches or exemp-

tion thus raises no serious issues worthy of this Court's plenary consideration.[18]

Petitioner's contention that the decree mandates that it engage in specific acts contrary to its beliefs is also untenable. All that the decree requires is that the school do more than remain silent in the face of circumstantial evidence giving rise to an inference that it was founded or expanded for racially discriminatory reasons and continues to function on that basis. The decree provides examples, drawn from *Norwood*, of evidence which would tend to indicate that a school follows a nondiscriminatory policy. However, under the decree that determina-

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tion, occasions some degree of involvement with religion." The district court's order in this case is fully consistent with the First Amendment because it avoids "excessive entanglement." The information sought by the IRS pursuant to the 1980 decree consists of statistical data and objective facts about a private school's historical development. *See* Stay Opposition, Appendix "B." The information requests are focused narrowly upon the admissions and employment policies of Mississippi private schools and are directly and cogently relevant to determining whether nondiscriminatory policies are in effect. *Bob Jones University v. United States*, 639 F.2d 147, 155 (4th Cir. 1980), *aff'd*, 461 U.S. ——, 76 L. Ed. 2d 157 (1983); *Goldsboro Christian Schools, Inc. v. United States*, 436 F. Supp. 1314, 1320 (E.D.N.C. 1977), *aff'd mem.*, 464 F.2d 879 (4th Cir. 1981), *aff'd sub nom. Bob Jones University v. United States; cf. EEOC v. Mississippi College*, 626 F.2d 477, 486-88 (5th Cir. 1980), *cert. denied*, 453 U.S. 1272 (1981). IRS makes no inquiry about religious beliefs, and it does not seek to trace the use of any funds. *Compare Meek v. Pittenger*, 421 U.S. 349 (1978); *McCormick v. Hirsch*, 460 F. Supp. 1337, 1357 (M.D. Pa. 1978).

[18] Petitioner's reliance upon *NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), is entirely misplaced. Petitioner is subject to IRS scrutiny only because it desires to be recognized as exempt from federal taxation, not because the government has sought to regulate it. The First Amendment permits, but does not require, tax exemption for churches, *see Walz*, and Congress has properly conditioned the grant of such exemption upon a showing of nondiscrimination. *Bob Jones University v. United States.*

tion is explicitly one for IRS to make, and the Service is directed explicitly to consider "any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment." Pet. App. at A-4. Indeed, the examples in the decree are prefaced by the phrase, "Such evidence might include, but is not limited to, . . . ," Pet. App. at A-3. Wholly apart from its exaggerated interpretation of individual paragraphs within the decree,[19] therefore, it is disingenuous for petitioner to claim that it is being enjoined to take any specific actions contrary to its doctrinal beliefs in order to keep its tax-exempt status.

Petitioner also asserts that the inference of discrimination arising from an adjudication, or from the relationship between the founding or expansion of a private school and public school desegregation (where the private school cannot demonstrate its nondiscriminatory policy) is "without rational basis or justification" (Pet. at 11). This aspect of the district court's decree, however, is based upon evidentiary principles developed over the years by federal courts, in order to determine whether private schools follow policies of nondiscrimination.[20]

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[19] For instance, petitioner errs in equating the decree's references to recruitment, publication, and communications with black community representatives with "evangelizing," *see* Pet. at 9, 10. The school must hire staff and inform potential students of its existence and admissions requirements in some manner. Requiring that it include information about its commitment to racial nondiscrimination and make efforts to ensure that this knowledge reaches possible sources of minority-race teachers or students simply does not amount to proselytizing for new adherents to petitioner's religious faith. *See Norwood*, 382 F. Supp. at 935; *EEOC v. Mississippi College*, 626 F.2d at 485 n.10.

[20] *See, e.g., United States v. Mississippi*, 499 F.2d 425, 430 (5th Cir. 1974) (*en banc*); *Brumfield v. Dodd*, 425 F. Supp. 528, 531-32 (E.D. La. 1976); *Norwood*, 382 F. Supp. at 924; *Gilmore v. City of Montgomery*, 337 F. Supp. 22, 24 n.2, 25 (M.D. Ala. 1972), *aff'd*

Such evidentiary rules are equally applicable to religious and non-religious institutions.[21] Moreover, there is a manifest "rational connection between the fact proved and the fact presumed"[22] under the district court's decree. The Mississippi private schools which refused to adopt policies of nondiscrimination after the three-judge court issued the preliminary injunction herein, *Green v. Kennedy*, 309 F. Supp. 1127 (D.D.C.), *appeal dismissed sub nom. Cannon v. Green*, 398 U.S. 956 (1970), and which consequently lost their entitlements to federal tax exemptions, were almost all founded "in the wake of" public school desegregation.[23] Thus, application of the rebuttable inference of discrimination to church-connected schools founded or expanded in the wake of desegregation is entirely proper.[24]

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in relevant part, 473 F.2d 832 (5th Cir. 1973), *aff'd in relevant part*, 417 U.S. 556 (1974); *Green v. Connally*, 330 F. Supp. at 1173.

[21] *See Jones v. Wolf*, 443 U.S. 595, 607-09 (opinion of the Court), 615-16 (dissenting opinion) (1979) (courts may apply rebuttable presumption that majority of congregation represents local church entity in dispute over right to church property); *Synanon Foundation, Inc. v. California*, 444 U.S. 1307, 1307-08 (Rehnquist, J., Circuit Justice) (1979) (churches are not entitled to different treatment from other charitable trusts in state courts); *cf. United States v. Freedom Church*, 613 F.2d 316, 322 (1st Cir. 1979) (district court may infer existence of records and possession by minister of church).

[22] *Leary v. United States*, 395 U.S. 6, 33 (1969), quoting *Tot v. United States*, 319 U.S. 463, 467 (1943).

[23] *See Coffey v. State Educational Finance Commission*; *Norwood v. Harrison*.

[24] Moreover, a number of federal courts have specifically found, after full hearings, that church-connected schools to which the inference attached did in fact maintain discriminatory practices which disqualified them for governmental assistance. *E.g., Brumfield v. Dodd*, 425 F. Supp. at 534-35 (Grawood Christian School); *Norwood v. Harrison*, 382 F. Supp. at 927-28 (South Haven Mennonite School); *Gilmore v. City of Montgomery*, 337 F. Supp. at

Finally, the standing issue raised by petitioner is not worthy of review for several reasons. First, this Court has only recently articulated the principles of standing applicable in this area in *Allen v. Wright*. In its opinion in that case, the Court specifically distinguished the instant matter on the basis of the extensive record evidence demonstrating the link between federal tax-exempt status, racially discriminatory private schools, and ineffective public school desegregation in Mississippi. 52 U.S. L.W. at 5118.[25] The recognition of the plaintiffs' standing in this suit therefore is not "in conflict with applicable decisions of this Court" nor does it represent "an important question of federal law which has not been, but should be, settled by this Court . . . ," U.S. Sup. Ct. Rule 17.1(c). Second, the lower courts in this case have not had an opportunity to consider what effect, if any, the decision in *Allen* should have on this matter; but the Court of Appeals explicitly stated that "[i]n the event that *Wright* [*v. Allen*] is modified or reversed by the Supreme Court, the Government may choose to return to the District Court for appropriate relief" (Pet. App. at A-1). Hence, no action by this Court at this time is necessary. Third, there is a serious question whether petitioner, as an intervenor, may appropriately raise the issue at all. Plaintiffs' standing to sue had been upheld prior to petitioner's entry into this case, and an intervenor takes the case in the posture in which he finds it—

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24 (St. James School); *see also, Norwood*, 382 F. Supp. at 928 (County Day School, held ineligible for textbooks, started in facilities provided rent-free by Presbyterian Church). This buttresses the rationality of applying the inference to church schools. *See, e.g., Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 20-31 (1976).

25 The Court found it unnecessary to "consider whether standing was properly found to exist in *Coit* [*v. Green*, 404 U.S. 997 (1971), *aff'g mem. Green v. Connally*, 330 F. Supp. 1150 (D.D.C. 1971)]" because the distinctions between *Allen* and this case suggest that the results in the two cases are not necessarily or irreconcilably in conflict. 52 U.S.L.W. at 5118.

and may not reopen issues already determined. *Knowles v. Board of Public Instruction of Leon County*, 405 F.2d 1206, 1207 (5th Cir. 1969); *United States v. School District of Omaha*, 367 F. Supp. 198, 201 (D. Neb. 1973); *Moore v. Tangipahoa Parish School Board*, 298 F. Supp. 288, 293 (E.D. La. 1969); *Stell v. Savannah-Chatham County Board of Education*, 255 F. Supp. 88, 92 (S.D. Ga. 1966); *see United States v. California Cooperative Canneries*, 279 U.S. 553, 556 (1929) (Brandeis, J.) (referring to "settled rule of practice that intervention will not be allowed for the purpose of impeaching a decree already made").

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1355-69

WILLIAM H. GREEN, *et al.*,
Plaintiffs,

v.

DONALD T. REGAN, *et al.*,
Defendants.

ORDER

[Filed Jul. 22, 1983]

All proceedings in this matter were stayed pursuant to the prior Order of January 6, 1982, awaiting the Supreme Court's decision in *Bob Jones University v. United States* and *Goldsboro Christian Schools, Inc. v. United States*, 51 U.S.L.W. 4593 (U.S. May 24, 1983). That stay of proceedings was vacated on June 15, 1983 and on July 8, 1983, the Court heard arguments of counsel for the parties upon (a) defendant-intervenor Clarksdale Baptist Church's Motion to Modify Injunction, and (b) plaintiffs' Motion for Summary Judgment with respect to the Church's claims. (These substantive motions were pending in this matter when the stay of proceedings was entered.)

Upon consideration of the arguments of counsel, the pleadings and evidence tendered in this cause, and after review of the entire record herein, it is ORDERED that plaintiffs' Motion for Summary Judgment in their favor

with respect to the constitutional and statutory claims raised by intervenor's Motion to Modify Injunction is hereby GRANTED.

The Court further, and alternatively, rules directly upon intervenor's Motion to Modify Injunction, since intervenor contends that summary judgment is inappropriate. Upon the basis of all of the evidence (including specifically the deposition testimony of the witnesses for the intervenor), the Court finds that intervenor has failed to establish that application by the Internal Revenue Service of the procedures and standards contained in the Court's injunctive decree of May 5, 1980 (as amended June 2, 1980) to the Clarksdale Baptist Church or to church-connected schools in Mississippi, generally, violates any statutory or constitutional right of the intervenor. Accordingly, it is further ORDERED that the Motion to Modify Injunction filed by the Clarksdale Baptist Church is DENIED.

On July 13, 1981 the Court suspended application of its 1980 decrees as to church-connected schools in Mississippi, pending disposition of the claims raised by intervenor Clarksdale Baptist Church. The Court now having ruled upon those claims, it is further ORDERED that the previous Order of July 13, 1981 is VACATED, and defendants shall apply the May 5, 1980 and June 2, 1980 decrees of this Court to church-connected private schools in Mississippi.

Because application of the Court's prior rulings to church-connected schools was suspended for two years, it is further ORDERED that defendants shall file two additional annual reports with the Court (and serve copies thereof upon counsel for the parties), containing the information required by paragraph (10) of the Court's Order of May 5, 1980, said reports to be filed on July 1, 1984 and July 1, 1985.

It is further ORDERED that the effectiveness of this Order shall be stayed for a period of twenty (20) days

from the date of entry hereof, so that defendants or defendant-intervenor may have an opportunity to seek a further stay of this Court's rulings from the United States Court of Appeals for the District of Columbia Circuit, in connection with any appeal they may desire to prosecute.

Dated: July 22, 1983

/s/ George L. Hart, Jr.
GEORGE L. HART, JR.
United States District Judge